

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs November 27, 2007

JERRY DICKERSON v. HOWARD CARLTON, WARDEN

Appeal from the Criminal Court for Johnson County
No. 4999 Robert E. Cupp, Judge

No. E2007-01967-CCA-R3-HC - Filed March 10, 2008

The pro se petitioner, Jerry Dickerson, appeals as of right the Johnson County Criminal Court's summary dismissal of his petition for a writ of habeas corpus. The petition and subsequent amendments make various allegations regarding the sufficiency of the evidence to support his convictions, the trial court's jury instructions, the state's failure to disclose exculpatory evidence, defects in the indictment, and errors in the convicting court's evidentiary rulings. The habeas court summarily dismissed the petition for failure to state a cognizable claim. Following our review, we affirm the judgment of the habeas court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court is Affirmed

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which NORMA MCGEE OGLE and ALAN E. GLENN, JJ., joined.

Jerry Dickerson, Pro Se, Mountain City, Tennessee.

Robert E. Cooper, Jr., Attorney General & Reporter; Leslie E. Price and Brent C. Cherry, Assistant Attorneys General, Nashville, Tennessee, attorneys for appellee, State of Tennessee.

OPINION

The record reflects that the petitioner was convicted by a Knox County jury of first degree murder and aggravated robbery and sentenced to an effective sentence of life imprisonment in March 1992. This court affirmed his convictions and sentences on direct appeal. State v. Dickerson, 885 S.W.2d 90 (Tenn. Crim. App. 1993). The petitioner unsuccessfully pursued a petition for post-conviction relief, the denial of which was affirmed by this court on appeal. Jerry Whiteside Dickerson v. State, No. 03C01-9710-CR-00472, 1998 WL 619110 (Tenn. Crim. App. Sept. 16, 1998). The petitioner filed a petition for a writ of habeas corpus that was also dismissed by the trial court, and this court affirmed the dismissal on appeal. Jerry W. Dickerson v. State, No.E2003-02854-CCA-R3-PC, 2004 WL 1201272 (Tenn. Crim. App. June 1, 2004).

In this, his second petition for a writ of habeas corpus, the petitioner alleges that his sentence is void because the trial court failed to instruct the jury regarding the affirmative defense of duress, the trial court failed to instruct the jury regarding the lesser included offenses of first degree murder and especially aggravated robbery, the evidence is insufficient to support his convictions, the state failed to disclose exculpatory information, and the trial court erred in its admission of evidence. The habeas court summarily dismissed the petition based upon its finding that none of the alleged errors would merit habeas corpus relief.

ANALYSIS

Tennessee law provides that “[a]ny person imprisoned or restrained of his liberty under any pretense whatsoever . . . may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment.” Tenn. Code Ann. § 29-21-101. Habeas corpus relief is limited and available only when it appears on the face of the judgment or the record of proceedings below that a trial court was without jurisdiction to convict the petitioner or that the petitioner’s sentence has expired. Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993). To prevail on a petition for a writ of habeas corpus, a petitioner must establish by a preponderance of the evidence that a judgment is void or that a term of imprisonment has expired. See State ex rel. Kuntz v. Bomar, 214 Tenn. 500, 504, 381 S.W.2d 290, 291-92 (1964). If a petition fails to state a cognizable claim, it may be dismissed summarily by the trial court without further inquiry. See State ex rel. Byrd v. Bomar, 214 Tenn. 476, 483, 381 S.W.2d 280, 283 (1964); Tenn. Code Ann. § 29-21-109. We note that the determination of whether to grant habeas corpus relief is a matter of law; therefore, we will review the trial court’s finding de novo without a presumption of correctness. McLaney v. Bell, 59 S.W.3d 90, 92 (Tenn. 2001).

Allegations attacking the sufficiency of the convicting evidence are not cognizable in a habeas corpus proceeding. Gant v. State, 507 S.W.2d 133, 136-37 (Tenn. Crim. App. 1973). Similarly, allegations regarding jury instructions and evidentiary rulings are claims that, if proven, would render the challenged judgments voidable rather than void; therefore, they do not present cognizable claims for habeas corpus relief. See Passarella v. State, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994); Luttrell v. State, 644 S.W.2d 408, 409 (Tenn. Crim. App. 1982). In summarily dismissing the petition, the habeas court found that none of the allegations merited habeas corpus relief. We agree and affirm the summary dismissal by the habeas court.

CONCLUSION

Based upon the foregoing, we conclude that the petitioner has failed to establish entitlement to habeas corpus relief. The judgment of the habeas court is affirmed.

D. KELLY THOMAS, JR., JUDGE